OAH 65-0325-21677-CV

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

Steve Abrahamson and Tim Kotzian,

Complainants,

ORDER ON MOTION TO DISMISS AND MOTION FOR SUMMARY DISPOSITION

vs.

The St. Louis County School District, Independent School District No. 2142, Bob Larson, Tom Beaudry, Darrell Bjerklie, Gary Rantala, Andrew Larson, Chet Larson, and Zelda Bruns, in their capacity as School Board Members,

Respondents.

This matter is before the Panel of Administrative Law Judges on remand from the Minnesota Supreme Court on the Complainants' allegations of violations of Minn. Stat. Ch. 211A by the St. Louis County School District in connection with a 2009 school bond referendum special election.[1]

A prehearing conference was held by telephone on February 25, 2013. Pursuant to the First Prehearing Order, the Parties filed their dispositive motions on April 9, 2013, and filed their responses to the motions on April 23, 2013. Oral argument was heard on July 1, 2013, and the record with respect to the motions closed that day.

Erick G. Kaardal, Mohrman & Kaardal, P.A., represented the Complainants. Stephen M. Knutson and Michelle D. Kenney, Knutson Flynn & Dean, P.A., represented the Respondents.

Based upon all of the files, records, and proceedings herein, and for the reasons set out in the attached Memorandum, the assigned Panel of Administrative Law Judges makes the following:

[1] *Abrahamson, et al, v. St. Louis County Sch. Dist.* 819 N.W.2d 129 (Minn. 2012).

ORDER

IT IS HEREBY ORDERED as follows:

1. Respondents' Motion to Dismiss is **DENIED**.

2. Complainants' Motion for Summary Disposition is **DENIED**.

3. This matter will proceed to an evidentiary hearing to be scheduled by separate order.

Dated: August 2, 2013

s/Ann O'Reilly
ANN O'REILLY
Presiding Administrative Law Judge

s/Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

s/Kirsten Tate
KIRSTEN TATE
Administrative Law Judge

MEMORANDUM

PROCEDURAL SUMMARY

On November 4, 2010, City of Tower Mayor Steve Abrahamson and Tim Kotzian, Chair of the Coalition for Community Schools,[2] filed a Complaint with the Office of Administrative Hearings alleging that St. Louis County Independent School District No. 2142 (School District) and the individual members of its School Board, acting in their official capacity, violated provisions of Minnesota Statutes Chapters 211A and 211B in connection with a December 2009 school bond referendum special election.

[2] Tower is a Minnesota city located within the boundaries of Independent School District 2142. The Coalition for Community Schools is an *ad hoc* citizens group formed to oppose the School District's restructuring plan and bonding referendum.

By Order dated November 9, 2010, the assigned Administrative Law Judge dismissed the Complaint in its entirety. The Complainants appealed and, ultimately, the Minnesota Supreme Court remanded the matter to the Office of Administrative Hearings for further evidentiary proceedings on Complainants' allegations of Chapter 211A violations.[3] The Supreme Court dismissed all of Complainants' claims under Minn. Stat. § 211B.06, related to false campaign statements.[4]

FACTUAL BACKGROUND

On September 14, 2009, the St. Louis County School Board approved for placement on the ballot a referendum related to school funding, which was the subject of a special election on December 8, 2009. The ballot question was whether to authorize the School District to issue "school building bonds in an amount not to exceed $78,800,000." Between September 14, 2009 and the special election, the School Board distributed newsletters and other publications that contained information about the ballot question. The voters passed the bond referendum on December 8, 2009.

On November 4, 2010, the Complainants filed a Complaint against the School District and seven School Board members in their official capacity. The Complaint alleged that the School District promoted the ballot referendum by conveying exaggerated and false statements regarding the District's financial condition in violation of Minn. Stat. § 211B.06. In addition, the Complaint asserted that the School District violated campaign finance reporting requirements under Minn. Stat. Ch. 211A by not reporting expenditures incurred, and in-kind contributions received, in promoting the passage of the December 8, 2009 ballot question. Specifically, the Complaint alleged that the Respondents violated Minn. Stat. §§ 211A.02 (financial report), 211A.03 (final report), 211A.05 (failure to file statement), and 211A.06 (failure to keep account).

Chapter 211A Claims[5]

In their Complaint, Complainants allege that the School District violated Minn. Stat. §§ 211A.02, 211A.03, 211A.05, and 211A.06 by failing to file financial reports for disbursements made by the School District in promotion of the ballot question that exceeded $750. Section 211A.02, subd. 1 provides:

> (a) **A committee** or a candidate **who** receives contributions or **makes disbursements of more than $750** in a calendar year shall submit an initial report to the filing officer within 14 days after the candidate or committee receives or makes disbursements of more than $750 and shall continue to make the reports listed in paragraph (b) until a final report is filed.

[3] *Abrahamson v. St. Louis County Sch. Dist.,* 819 N.W.2d 129 (Minn. 2012).
[4] *Id.*
[5] The Section 211B.06 false statement claims are not addressed herein because they have been dismissed in their entirety by the Minnesota Supreme Court.

(b) **The committee** or candidate must file a report by January 31 of each year following the year when the initial report was filed and in a year when the candidate's name or ballot question appears on the ballot, the candidate or committee shall file a report:

(1) ten days before the primary or special primary;

(2) ten days before the general election or special election;

(3) 30 days after a general or special election.[6]

Section 211A.03 allows a candidate or committee to file a final report when all debts have been settled and disposition has been made of all assets in excess of $100. Sections 211A.05 and 211A.06 provide that the failure to file the reports required under Sections 211A.02 and 211A.03 is a crime punishable as a misdemeanor.

The threshold question presented in this matter is whether the School District is subject to the campaign finance reporting requirements of Chapter 211A. That is, whether the School District is a "committee" that made "disbursements" of more than $750.

A "committee" is defined in Minn. Stat. § 211A.01, subd. 4, as:

…a **corporation** or association or persons **acting** together to influence the nomination, election, or defeat of a candidate or **to promote** or defeat **a ballot question. Promoting** or defeating **a ballot question includes efforts to qualify** or prevent **a proposition** from qualifying **for placement on the ballot.**[7]

Disbursement is defined in Minn. Stat. § 211A.01, subd. 6 as:

…money, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent. '**Disbursement' does not include payment by a** county, municipality, **school district**, or other political subdivision **for election-related expenditures required or authorized by law.**[8]

The Complainants identified seven specific statements in their Complaint to support the allegation that the Respondents "promoted" a ballot question. The first four of those statements are as follows:

[6] Emphasis added.
[7] Emphasis added.
[8] Emphasis added.

Statement 1:

> If residents vote no, their taxes will most likely still increase – in some cases, by a large amount. That's because if the plan is not approved, the school district would enter into "statutory operating debt" by June 2011, which means the State of Minnesota recognizes that the school district can no longer balance its expenditures and revenues, and would need to dissolve. Children in this school district would then go to neighboring school districts.[9]

Statement 2:

> [I]f a "no" vote passes, you'll likely be paying taxes of the district shown here that's nearest to your home.[10]

Statement 3:

> Projected annual deficit in 2011-12: $4.1 million.[11]

Statement 4:

> The plan now up for a December 8 public vote was developed to not only save millions of dollars and ensure that district's continued operation, its implementation will provide many new opportunities for our young people's education.[12]

Statements 1, 2, and 4 are contained in the School District's September/October 2009 newsletter entitled, "Enhancing Opportunities for Our Kids' Future."[13] With respect to Statement 3, the Complaint references the School District's December 2009 newsletter as the source.[14] Although that exact statement does not appear in the December 2009 newsletter, it essentially reflects a summation of the following statement that does appear:

> Without adoption of the proposed plan, the projected shortfall would be near $4.1 million for budget year 2011-12, which would place the district into statutory operating debt.[15]

The Complaint also cites to two pages from the School District's Long Range Facilities Plan that showed a projected 2011-12 deficit of $4,131,829.[16]

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[9] Complaint Ex. E (September/October 2009 School District publication).
[10] *Id*.
[11] Complaint Exs. H and K.
[12] Complaint Ex. E.
[13] Complaint at 7-8 and 10, Ex. E.
[14] Complaint Ex. H.
[15] Ex. H at App. 50.
[16] Complaint Ex. K.

In addition to the four statements identified above, the Complaint lists three statements allegedly made by School Board members at a September 9, 2010 School Board study session, which were published in the School District's September/October 2009 newsletter, as further evidence that that Respondents promoted passage of the ballot question. These three statements are:

Statement 5:

> Bottom line is if we don't pass this bond referendum we'll be putting our schools in hospice.[17]

Statement 6:

> Unlike the recommended plan where we are responsibly investing in a restructured district by closing some schools, these other options also close schools but don't solve any of our financial challenges. These other options are not good for young people and our entire region.[18]

Statement 7:

> The school board has developed an affordable plan for restructuring the district, which would provide students with expanded curriculum in modern learning environments, so hopefully voters will approve the plan and the options discussed at this study session will never have to be implemented.... Unfortunately, no matter how you look at these options if a no vote prevails, the board has little choice other than to close schools and make severe program cuts. It is becoming more apparent that our children would then ultimately have to attend school in other districts.[19]

The Complainants also cite, for the first time in their Motion for Summary Disposition, to two additional statements in the School District's December 2009 newsletter.[20] These statements are:

- A yes vote will bring about the realignment and modernizations described throughout this newsletter; and

[17] Complaint Ex. E (statement attributed to Board Member Gary Rantala).
[18] Complaint Ex. E (statement attributed to Board Chair Robert Larson).
[19] Complaint Ex. E (statement attributed to Superintendent Dr. Charles Rick).
[20] Complaint Ex. H at App. 49.

- A yes vote will keep the school district intact.[21]

The fact that these statements were published is not disputed. The context and effect of the statements are in dispute.

PROCEDURAL HISTORY

On November 9, 2010, the assigned Administrative Law Judge (ALJ) dismissed the Complaint for failure to state a prima facie case.[22] The ALJ ruled that school districts are not subject to Chapter 211A's campaign finance reporting requirements because they do not qualify as "committees" within the meaning of Minn. Stat. § 211A.01, subd. 4.[23] Alternatively, the ALJ held that, even if school districts are "committees," the specific expenses alleged in the complaint fell within the exemption for election-related expenditures provided in the definition of "disbursement" at Minn. Stat. § 211A.01, subd. 6.[24] Finally, the ALJ held that none of the four allegedly false statements identified in the Complaint were factually false.[25]

The Complainants sought appellate review of the ALJ's decision. The Court of Appeals affirmed in part, reversed in part, and remanded.[26] The court reversed the ALJ's holding that a school district does not qualify as a committee under Chapter 211A, and held that school districts are subject to the campaign finance reporting requirements.[27] The court also reversed the ALJ's holding that the expenditures alleged in the Complaint were not "disbursements," concluding that the School District's expenditures were neither required nor authorized by law.[28] Finally, the court reversed the ALJ's dismissal of the Section 211B.06 claims with respect to two of the statements, but affirmed with respect to another of the statements.[29] The Complainants did not challenge the ALJ's decision regarding a fourth statement.[30]

[21] These two statements were not identified in the original Complaint. However, the Complainants did cite to the December 2009 newsletter as the source for Statement 3 in the Complaint, and the December 2009 newsletter was attached as an exhibit to the Complaint. *See* Complaint Ex. H. Moreover, the Complaint specifically stated that the statements cited were merely examples and were not meant to be all inclusive. *See* Complaint at p. 7. Accordingly, the inclusion of these additional statements for review on summary disposition is permissible.
[22] *See*, *Abrahamson v. St. Louis County Sch. Dist*., OAH Docket No. 48-0325-21677, Order of Dismissal (November 10, 2010).
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *See, Abrahamson v. St. Louis County Sch. Dist*., 802 N.W.2d 393 (Minn. Ct. App. 2011).
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*

Supreme Court Decision

The Minnesota Supreme Court granted the School District's petition for further review. In a decision dated August 10, 2012, the Court held that the Complaint failed to state a prima facie violation of Section 211B.06 with respect to the allegedly false statements, and reinstated the ALJ's dismissal of those claims.[31] In addition, the Court held that a school district is a "corporation" under section 211A.01, subd. 4, and, therefore, can qualify as a "committee" subject to Chapter 211A's campaign finance reporting requirements *if it acts "to promote or defeat a ballot question*."[32] The Court remanded the Chapter 211A claims to the Office of Administrative Hearings for further evidentiary proceedings consistent with its opinion.

In reaching its decision, the Court noted that Minn. Stat. § 211A.02 imposes reporting requirements on "[a] committee or a candidate who receives contributions or makes disbursements of more than $750 in a calendar year." A "committee," in turn, is defined to mean "a corporation or association of persons acting together to influence the nomination, election or defeat of a candidate or to promote or defeat a ballot question."[33] Because school districts are public corporations under Minnesota law,[34] the Court held that the plain meaning of the word "corporation" in Chapter 211A's definition of "committee" is broad enough to include public corporations.[35] The Court reasoned further that had the Legislature intended to exclude school districts from the application of Chapter 211A, it could have done so explicitly.[36]

The Court then considered whether the Complaint alleged sufficient facts to state a prima facie claim that the School District promoted the ballot question. The Court noted that the materials published by the School District in the weeks leading up to the special election included statements that: (1) if the referendum was defeated, taxes would "most likely still increase;" (2) defeat of the referendum would lead to district dissolution "as an inevitable consequence;" and (3) defeat of the referendum would "put[] every school in the district at the risk of closure."[37] The Court further noted that the materials also discussed the numerous ways in which the additional funding would benefit the educational opportunities available to the District's students.[38]

The Court concluded that the Complaint sufficiently alleged a prima facie claim that the School Districts' statements were promotional and remanded the Chapter 211A reporting violations to the OAH for an evidentiary hearing.[39] The Court emphasized, however, that whether the Panel of Administrative Law Judges will ultimately find that

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[31] *Abrahamson v. St. Louis County Sch. Dist*., 819 N.W.2d 129, 139 (Minn. 2012).
[32] *Id.* at 131 (emphasis added).
[33] Minn. Stat. § 211A.01, subd. 4.
[34] *See,* Minn. Stat. § 123A.55.
[35] *Abrahamson*, 819 N.W.2d at 134.
[36] *Id.*
[37] *Id*. at 136.
[38] *Id*.
[39] *Id.* 136.

these statements were promotional will depend on the evidence presented at the hearing.[40]

RESPONDENTS' MOTION TO DISMISS

Upon remand by the Minnesota Supreme Court, Respondents brought a Motion to Dismiss alleging that the Complaint is untimely and barred by the statute of limitations. Respondents argue that the alleged promotional statements relied on by Complainants to trigger Respondents' campaign finance reporting obligations were made more than one year prior to the filing of the Complaint. Respondents assert that in order for the Complaint to have been timely filed, the promotional statements must have been made within one year of filing the Complaint.

The Fair Campaign Practices Act (Act) sets forth a one-year limitation period for the filing of complaints alleging a violation of the Act, with certain exceptions. Minnesota Statutes Section 211B.32, subd. 2, states:

> **The complaint must be filed** with the [Office of Administrative Hearings] **within one year after the occurrence *of the act or failure to act that is the subject of the complaint***, except that if the act or failure to act involves fraud, concealment, or misrepresentation that could not be discovered during that one-year period, the complaint may be filed with the office within one year after the fraud, concealment, or misrepresentation was discovered.[41]

Respondents contend that the act at issue in this matter is the School District's alleged promotion of the bond referendum ballot question. Respondents reason that the Complaint relies primarily on specific statements published in the School District's September/October 2009 newsletter and statements made at a September 2009 School Board meeting as the basis for the claim that Respondents promoted passage of the bond referendum ballot question. Because the Complaint was not filed until November 4, 2010, Respondents assert that the Complaint must be dismissed as beyond the one-year limitations period.

The Complainants, on the other hand, argue that the Complaint is timely because the act or failure to act at issue in this matter is the Respondents' failure to file campaign finance reports detailing the School Districts' expenditures relating to promotion of the bond referendum. Because the special election on the bond referendum was December 8, 2009, the Complainants assert that campaign finance reports were due on November 28, 2009 (10 days before the special election pursuant to § 211A.02, subd. 1(b)(2)); January 7, 2010 (30 days after the special election pursuant to § 211A.02, subd. 1(b)(3)); and January 31, 2010 (final report pursuant to § 211A.02,

[40] *Id*.
[41] Emphasis added.

subd. 1(b)).[42] Given these deadlines, the Complainants maintain their November 4, 2010 Complaint is well within the one-year statute of limitations period.

The Complainants also contend that the Minnesota Supreme Court definitively determined that the School District is a "committee" and acted to promote the ballot question, rendering it subject to Chapter 211A's reporting requirements. According to the Complainants, this determination is the law of the case and may not be re-litigated.

Standard of Review for a Motion to Dismiss

The Administrative Law Judge may recommend dismissal of a matter when "the case or any part thereof has become moot or for other reasons."[43] "Other reasons" include failure to state a claim upon which relief may be granted, lack of jurisdiction, or insufficient service of process.[44]

A motion that does not rely on any part of the record, but asserts only that the allegations in the complaint fail to support a cognizable legal claim is properly reviewed as a motion for failure to state a claim upon which relief can be granted.[45] The focus of a motion to dismiss for failure to state a claim is the adequacy of the pleadings.[46] The court must consider only the facts alleged in the complaint, accepting those facts as true.[47] Dismissal is proper when it is clear and unequivocal from the face of the complaint that the statute of limitations has run on all of the claims asserted.[48]

Analysis

The act or failure to act that is the subject of Complainant's Chapter 211A claims is the School District's alleged failure to file campaign finance reports on the dates that such reports were due to be filed. It is not the promotion of the ballot question that allegedly caused the School District to violate the reporting requirements. Such alleged promotion would merely subject Respondents to the reporting requirements. The alleged failure to file the reports was the operative act for purposes of a violation of law.

The special election for the bond referendum was held on December 8, 2009. A committee that receives or disburses more than $750 in a calendar year is required to submit reports 10 days before the special election and 30 days after the special election.[49] In addition, annual reports are due by January 31 of each year following the year when the initial report was filed.[50] Therefore, if the School District promoted the ballot question, and if it received or made disbursements of more than $750, financial

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[42] *See,* Complainants' Response Brief at 2, which provides slightly different dates. *See also,* record of oral argument on July 1, 2013.
[43] Minn. R. 1400.5500 (K).
[44] *See*, Minn. R. Civ. P. 12.02.
[45] *Witzman v. Lehrman, Lehrman & Flom,* 601 N.W.2d 179, 184-185 (Minn. 1999), *rehearing denied.*
[46] *Group Health Plan, Inc. v. Philip Morris Inc*., 621 N.W.2d 2 (Minn. 2001).
[47] *Bodah v. Lakeville Motor Express, Inc*., 663 N.W.2d 550 (Minn. 2003).
[48] *Jacobson v. Bd. of Trustees of the Teachers' Retirement Ass'n*, 627 N.W.2d 106 (Minn. Ct. App. 2001).
[49] Minn. Stat. § 211A.02, subd. 1(b)(2) and (3).
[50] Minn. Stat. § 211A.02, subd. 1(b).

reports were due on or about November 28, 2009, January 7, 2010, and January 31, 2010. A final report would have been due sometime after January 31, 2010.[51] Because the Complaint in this matter was filed on November 4, 2010, it was filed within one year of each of those deadlines.[52]

With respect to the initial report that is due to be filed within 14 days after a committee first receives or makes disbursements of more than $750,[53] the statute of limitations for that claim will depend on when such report was actually due and if such report was actually required.[54] In other words, it would depend on whether or when the committee reached the $750 threshold amount. Because there is a material issue in dispute as to whether the School District is even subject to the reporting requirements (see below), there is insufficient evidence at this juncture to determine when the 14-day deadline occurred, or even if it applied at all. As a result, a decision on the timeliness of the Section 211A.02, subd. 1(a) claim must be deferred until hearing. If it is ultimately determined that the School District was subject to the reporting requirements of Chapter 211A, then the Respondents can renew their Motion to Dismiss with respect to the timeliness of the Section 211A.02, subd. 1(a) claim. At this time, however, Respondents' Motion to Dismiss is denied.

Finally, the Panel rejects Complainants' contention that the Minnesota Supreme Court determined that the School District was, in fact, acting as a "committee" in this matter.[55] The Court held only that the Complaint sufficiently alleged a *prima facie* case and that the School District *may* be found to be a "committee" for purposes of Chapter 211A *if* it is determined that it acted to promote the ballot question. As the Court noted, "[T]he committee must nevertheless 'act[]…to promote or defeat a ballot question' in order to be subject to the reporting requirements of section 211A.02, subdivision 1(a)."[56] Accordingly, the Court stated that whether, on remand, the Panel will ultimately find that the School District acted to promote the ballot question will depend on the evidence presented at the evidentiary hearing.[57]

The Court recognized that *prima facie* determinations are based on the allegations made in the Complaint without input from the Respondents.[58] "*Prima facie*" means "[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted."[59] The Court's conclusion that the Complainants made a *prima facie* showing that the School District was a "committee" under Minn. Stat. § 211A.02, subd. 4,

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[51] Minn. Stat. § 2111A.03.
[52] *See*, Minn. Stat. § 211B.32, subd. 2.
[53] Minn. Stat. § 211A.02, subd. 1(a).
[54] If it is determined that the School District did not "promote" the ballot question, or if the disbursements made were all "required or authorized by law," then no report would be required.
[55] Complainants' Response Memorandum at 2 and 6.
[56] *Abrahamson*, 819 N.W.2d at 135-136.
[57] *Id.* at 136.
[58] *See*, Minn. Stat. § 211B.33; *Barry v. St. Anthony-New Brighton Indep. Sch. Dist.,* 781 N.W.2d 898, 902 (Minn. App. 2010). (To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.)
[59] Black's Law Dictionary, 8th Ed. (West 2004).

involved an entirely different analysis than that required to establishing the ultimate question of the case, which is whether the School District acted to promote the referendum. Thus, while the Court declared that the School District was a corporation subjecting it to the definition of "committee," it did not declare that the School District was, in fact, a corporation acting to promote a ballot question, as required under the statutory definition of "committee." Otherwise, remand on the question of promotion would have been unnecessary.

COMPLAINANTS' MOTION FOR SUMMARY DISPOSITION

Complainants, too, have brought a dispositive motion. In their Motion for Summary Disposition, Complainants assert that the application of the law to the undisputed facts mandates a finding that Respondents' violated the financial reporting requirements of Chapter 211A. Complainants assert essentially two arguments in support of their Motion.

First, Complainants contend that the School District qualifies as a "committee" under Minn. Stat. § 211A.01, subd. 4, by virtue of its sole act of calling for a special election on the referendum. According to Complainants, "promoting" a ballot question is expressly defined in Subdivision 4 to include "efforts to qualify…a proposition…for placement on the ballot." Thus, Complainants argue, by placing the referendum question on the ballot, the School District was, by definition, "promoting" the ballot question and falls within the definition of "committee," subjecting it to the financial reporting requirements of Chapter 211A. The Complainants maintain that had the Legislature intended to exclude school districts from the definition of committee, it could have easily done so. Because the Legislature did not exempt School Districts, and because the act of qualifying a question on a ballot is, by statutory definition, "promotion," Complainants assert that there is no need to further analyze whether the materials published were promotional in nature.

In addition, Complainants assert that because placement of the referendum on the ballot qualified the School District as a "committee" under Chapter 211A, "as a matter of law," then "all expenditures of the District relating to or regarding the ballot question" exceeding $750 and not otherwise authorized or required by law, are reportable under Chapter 211A. In support of this contention, Complainants submit several invoices documenting the printing and postage costs for the School District's September, October, November and December 2009 newsletters. These invoices show expenditures exceeding $750. Based upon these submissions, Complainants argue that summary disposition is warranted declaring the School District a "committee" under Chapter 211A and requiring reporting of all expenditures made by the School District related to the ballot question that exceeded $750.

In the alternative, Complainants argue that there is no material dispute of fact that the materials published by the School District are promotional, thereby subjecting the School District to the reporting requirements of Chapter 211A. As set forth above, the Complaint identified seven specific statements that Complainants allege promoted the ballot question. In addition, Complainants cite two more statements in the School

District's December 2009 newsletter as part of their Motion for Summary Disposition.[60] These statements, the Complainants argue, while not expressly stating, "Vote Yes," were the functional equivalent of express campaign advocacy and "urged the passage of the ballot question." Complainants assert that because there is no dispute of fact that these statements were published, and because these statements were indisputably promotional in nature, they are entitled to summary disposition.

Respondents, on the other hand, maintain the Complainants have not established that they are entitled to judgment as a matter of law. Respondents assert that there are material factual issues in dispute as to: (1) whether the School District "promoted" the passage of the ballot question; and (2) whether it made disbursements of more than $750 that were not required or authorized by law.

Respondents assert that calling a special election on a ballot question does not equate to promoting or advocating passage of that issue. Respondents contend that it would be a "ludicrous" result if the definitions of "committee" and "promoting" were read to mean that a school district's act of placing a referendum on a ballot automatically renders a school district subject to campaign reporting requirements.

Respondents reason that school districts have legal authority to finance capital improvements through the issuance of general obligation bonds. However, before such bonds may be issued, a school district is legally obligated to place the issue on the ballot for approval by a majority of the voters. Respondents argue that because school districts are legally required to place referenda on the ballot, such action is not akin to promotion and cannot subject a school district to campaign finance reporting requirements.

In addition, Respondents assert that school boards have a "recognized responsibility and duty" to inform voters about referenda that it places before them. Thus, expenditures made to inform voters of the referendum are both required and authorized by law, and are not "disbursements" as defined by Minn. Stat. § 211A.01, subd. 6.

Finally, Respondents contend that the statements identified by the Complainants as promoting passage of the ballot question were not, in fact, promotional or the functional equivalent of express advocacy. Instead, the Respondents maintain that the identified statements, when read in context of the whole article or communication, were objective and neutrally conveyed the potential consequences of the bond referendum not passing. According to the Respondents, the identified statements simply provided information about the School Board's options, and were not appeals to voters to vote in favor of the ballot question. As such, Respondents contend that a material issue of fact exists both as to whether the cited materials promoted the passage of the referendum, and whether its expenditures were "disbursements" required or authorized by law.

[60] Complaint Ex. H at App. 49.

Motion Standard

Summary disposition is the administrative law equivalent to summary judgment. Summary disposition is appropriate where there is no genuine issue of material fact and where the application of law to undisputed fact will resolve the controversy.[61] The Office of Administrative Hearings has generally followed the summary judgment standards developed in the district courts in considering motions for summary disposition of contested case matters.[62]

The Administrative Law Judge's function on a motion for summary disposition, like a trial court's function on a motion for summary judgment, is not to decide issues of fact, but solely to determine whether genuine factual disputes exist with regard to material issues.[63] The judge does not weigh the evidence on a motion for summary judgment.[64]

In deciding a motion for summary disposition, the judge must view the evidence in the light most favorable to the non-moving party.[65] All doubts and factual inferences must be resolved against the moving party.[66] If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.[67]

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact.[68] If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts that are in dispute that can affect the outcome of the case.[69]

To successfully defeat a motion for summary judgment, the nonmoving party must show that there are specific facts in dispute that have a bearing on the outcome of the case.[70] It is not sufficient for the nonmoving party to rest on mere averments or denials; it must present specific facts demonstrating a genuine issue for trial.[71] A genuine issue is one that is not sham or frivolous.[72] A material fact is a fact whose resolution will affect the result or outcome of the case.[73]

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[61] *See, Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp*., 378 N.W.2d 63, 66 (Minn. Ct. App. 1985); *Gaspord v. Washington County Planning Commission*, 252 N.W.2d 590, 590-591 (Minn. 1977); Minn. R. 1400.5500(K) (2012); Minn. R. Civ. P. 56.03.
[62] *See,* Minn. R. 1400.6600 (2012).
[63] *See, e.g., DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).
[64] *Id.*
[65] *Ostendorf v. Kenyon*, 247 N.W.2d 834, 836 (Minn. Ct. App. 1984).
[66] *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).
[67] *DLH*, 566 N.W.2d at 69.
[68] *Thiele*, 425 N.W.2d at 582.
[69] *Highland Chateau, Inc. v. Minnesota Dep't of Public Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), *rev. denied* (Minn. Feb. 6, 1985).
[70] *Thiele*, 425 N.W.2d at 583; *Hunt v. IBM Mid America Employees Federal Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986).
[71] Minn. R. Civ. P. 56.05.
[72] *Highland Chateau,* 356 N.W.2d at 808.
[73] *Zappa v. Fahey*, 245 N.W.2d 258, 259-260 (Minn. 1976); *see also*, *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

While the purpose and useful function of summary judgment is to secure a just, speedy, and inexpensive determination of an action, summary disposition cannot be used as a substitute for a hearing where any genuine issue of material fact exists.[74] Summary disposition is only proper where there is no fact issue to be decided.[75]

Analysis

The last sentence of Minn. Stat. § 211A.01, subd. 4, states that "promoting" a ballot question "includes efforts to qualify or prevent a proposition from qualifying for placement on the ballot." Thus, Complainants contend that Subdivision 4, by its plain language, deems the placement of a referendum on a ballot as promotion, thereby subjecting all school districts that call for a vote on bond issues to campaign financial reporting requirements.[76] However, when read in the context of a school district's unique statutory obligation to call for elections on school bond referenda, Complainant's reading of Minn. Stat. § 211A.01, subd. 4 leads to an absurd and unworkable result.

A statute is ambiguous when it is subject to more than one reasonable interpretation.[77] Here, a reading of Minn. Stat. § 211A.01, subd. 4, is subject to at least two different interpretations, as demonstrated by the parties' competing arguments. Thus, the Panel must consider the legislative intent of the statute and its effect in conjunction with other statutory provisions.

In ascertaining legislative intent for a statute, courts should presume that "the legislature does not intend a result that is absurd, impossible of execution, or unreasonable."[78] The ultimate goal of statutory construction and interpretation is to avoid absurd results and unjust consequences, and to effectuate the intention of the legislature.[79]

Under Complainants' reading of Minn. Stat. § 211A.02, subd. 4, all school districts would, by operation of law, be "committees" subject to campaign reporting requirements simply by fulfilling their legal obligation to call for a vote on bonding matters. As a result, all school districts would be subject to financial reporting

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[74] *Sauter*, 70 N.W.2d at 353.
[75] *Id.*
[76] Respondents' contention that Complainants waived this argument because it was not asserted in their Complaint or appeal is unpersuasive. Legal argument is different from asserting a legal claim in a complaint. The Complaint alleged, with a certain amount of specificity, various violations of Chapter 211A. The assertion that the School District qualifies as a committee subjecting it to reporting requirements is inherent in the Complaint. The fact that Complainants did not assert this specific legal theory prior to this point in the litigation does not render the argument waived. While it may have been more efficient for the Complainants to have asserted this argument earlier in the game so that the appellate courts could have dealt with it among the other issues, there is nothing that prohibits Complainants from asserting this theory on summary disposition upon remand.
[77] *American Family Insurance Group v. Schroedl,* 616 N.W.2d 273, 277 (Minn. 2000).
[78] Minn. Stat. § 645.17.
[79] *See, Schroedl,* 616 N.W.2d at 278; *Brua v. Minnesota Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010).

requirements every time they placed a referendum on the ballot. In addition, school districts would be deemed to be "promoting" referenda simply by calling for such elections and putting referenda to a vote. Such a result would conflict with school districts' legal obligations to inform voters and obtain public input in that process.

Minnesota school districts are required to "furnish school facilities to every child of school age residing in any part of the district."[80] To carry out this responsibility, school districts are expressly authorized to issue general obligation bonds.[81] Before issuing such bonds, however, school districts are required to obtain the approval of a majority of voters through the election process.[82] In this way, school districts are *required by law* to place referenda on the ballot. Thus, unlike special interest or other *ad hoc* groups formed to promote a political agenda and/or to qualify or prevent the placement of issues on the ballot, school districts have the unique statutory obligation to call special elections and place referenda on the ballot for public approval.

Qualifying a proposition for placement on a ballot is different from the legal obligation to require a vote on an issue. The word "qualify" implies affirmative lobbying efforts on behalf of a group to get something not otherwise permitted on the ballot before the voting public. For example, gathering signatures on a petition to get a candidate's name on the ballot would be an act of qualifying an issue for placement on the ballot. Whereas, the legal requirement that school districts place referenda matters on the ballot does not require lobbying or promotion of an agenda. Rather, a school district is simply complying with a legislative directive to obtain voter approval.

Moreover, calling for a vote on an issue, as required by law, is entirely different from promoting the passage or defeat of such issue. The first is a statutory obligation to inform the public and obtain approval. The latter is an attempt to influence the result of the election. An attempt to influence the result of an election is promotion. The calling of a vote on an issue, however, is not, by itself, promotion in support or defeat of the issue.

According to the Minnesota Supreme Court in this case, "promote" means to "urge the adoption of" or "advocate."[83] A school district's exercise of its statutory obligation to call an election on a bonding issue, *by itself,* does not advocate for or against the passage of such issue; nor does it urge the adoption of the referendum. Rather, the legislature mandates school districts to call such elections to inform the public about school funding issues and have the public weigh in on the necessity of such funding. In other words, the purpose of the election is not to promote the referendum, but rather, to allow the public to decide on whether to approve or disapprove the initiative.

Based upon the Supreme Court's definition of "promote," the Panel concludes that Minn. Stat. § 211A.01, subd. 4, cannot be reasonably interpreted to mean that by

[80] Minn. Stat. § 123B.02, subd. 2.
[81] Minn. Stat. §§ 123B.62; 475.52, subd. 5.
[82] Minn. Stat. § 475.58, subd. 1.
[83] *Abrahamson*, 819 N.W.2d at 136, quoting *American Heritage Dictionary* 1410 (5th ed. 2011).

complying with its legal requirement of calling for an election, the School District became, by operation of law, a committee "promoting" the referendum. Such an interpretation would be would misconstrue the legislative purpose of calling for a vote on school bond issues.

The Panel's interpretation of the definition of "committee" is also consistent with the Supreme Court's decision to remand the issue of promotion for an evidentiary hearing. The Court, in its examination of the definition of "committee," did not address whether the School District's act of placing a bond referendum on the ballot resulted in "promoting" the ballot question for purposes of campaign-finance reporting.[84] The Complainants apparently did not raise this argument before the Supreme Court. Nonetheless, if a plain reading of the statute was clear and unambiguous, the Court could have decided the issue *sua sponte* without remand for a determination of whether the School District promoted the ballot issue. Instead, the Court remanded this matter to the OAH to expressly consider whether the specific statements published in School District newsletters were promotional so as to subject the School District to reporting requirements.[85] This suggests that the Court did not read the definitions of "committee" and "promotion" to mean that a school district's act of calling for an election on a bond referendum equates to promotion.

While the School District's placement of the referendum on the ballot was not, by operation of law, "promotion," its subsequent acts and statements related to that ballot question may, indeed, constitute promotion. Here, the Panel finds that there is a material dispute of fact as to whether the statements published by the School District arise to the level of promotion.

School districts have a legal obligation to inform the public about the financial conditions of the district necessitating a call for a bond referendum. In viewing the facts in a light most favorable to the non-moving party (the School District), there is a material dispute of fact as to whether the statements informed the public about the bonding issue or promoted the passage of the referendum. Thus, pursuant to the direction of the Minnesota Supreme Court,[86] the Panel must conduct an evidentiary hearing to analyze the statements identified in the Complaint to determine whether, by those statements, the School District promoted passage of the ballot question.

Lastly, Complainants have failed to establish, as a matter of law, that the School District expended more than $750 in disbursements that were not authorized or required by law. In support of their Motion, Complainants submit several invoices documenting the printing and postage costs for the School District's September, October, November and December 2009 newsletters, as well as an invoice from Johnson Controls, Inc.

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[84] *Abrahamson v. St. Louis County Sch. Dist*., 819 N.W.2d 129 (Minn. 2012).
[85] *Id*. at 136.
[86] *See Abrahamson*, 819 N.W.2d at 136 ("Whether, after the District answers the complaint and the case is fully litigated, the ALJ will ultimately find that these statements were promotional will depend on the evidence before it at that time . . . . Thus, our conclusion that the complaint states a prima facie claim that the District made promotional statements does not resolve whether Abrahamson and Kotzian will ultimately prevail on their claim").

While these documents show that the School District had expenditures exceeding $750, they do not establish that these expenses were "disbursements," as defined by Minn. Stat. § 211A.01, subd. 6.

Under Minn. Stat. § 211A.01, subd. 6, "disbursements" do not include payment by a school district for "election-related expenditures required or authorized by law." The fact that expenditures were made by the School District does not, in itself, establish that the expenses were necessarily "disbursements" under Minn. Stat. § 211A.01, subd. 6. There remains a question as to whether these expenditures were required or authorized by law.

Accordingly, the Panel concludes that there is a genuine dispute of material fact regarding whether the School District promoted passage of the ballot question and, if it did, whether it made disbursements of more than $750 triggering the campaign-finance reporting requirements. As a result, the Complainants' motion for summary disposition is denied.

This matter will proceed to an evidentiary hearing to be scheduled for a date in the near future. In addition, the Panel finds that the December 2009 newsletter is not outside the pleadings, and the Panel will consider the additional highlighted statements in determining whether the School District promoted the ballot question as alleged.

At the hearing, the burden will be on the Complainants to demonstrate by a preponderance of the evidence that the School District acted to promote the bond referendum ballot question; and that the School District made disbursements of more than $750 but failed to file campaign finance reports in violation of Minn. Stat. Ch. 211A.[87] An order setting this matter on for an evidentiary hearing will issue forthwith.

A.C.O., B.L.N., K.T.

[87] Contrary to Complainants' statements in its Memorandum in Support of its Motion for Summary Disposition, the Fair Campaign Practices Act does provide that the standard of proof for violations of Chapter 211A is a preponderance of the evidence. *See*, Minn. Stat. § 211B.32, subd. 4.